

Dear Todd Everts,

This letter sets forth the responses to the comments contained in your letter dated November 16, 2012, relating to legal concerns of SB 86. The comments are set forth in bold, italicized text and our responses are set forth in plain text immediately beneath each comment.

Whether SB 86, as written, violates the due process clause:

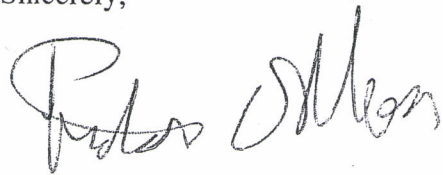
SB 86 distinguishes an agister's lien from other liens for service because of the unique issues that arise when dealing with livestock. The opinion in Cox v. Yellowstone County shows us why this distinction is necessary. In Cox, the United States District Court for the District of Montana articulated the balancing test required when there has been a deprivation of property:

"[C]onsideration of the private interest that will be affected by the prejudgment measure; second, an examination of the risk of erroneous deprivation through the procedures under attack and the probable value of additional or alternative safeguards; and third...***principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections.***" Emphasis added.

In Cox the Court held that due process rights are not violated when a state foregoes a hearing if there is a justification for doing so. In Cox, Yellowstone County did not offer any justification; however, Montana has substantive justification to support the expedited process outlined in this bill. Taking care of another person's livestock is a costly, time consuming task. A party seeking an agister's lien for nonpayment has already sustained a loss. It would be unreasonable and unfair to Montana's caretakers to suffer detrimental losses because of another person's nonpayment. A prolonged hearing and notice process, even if a few weeks, could be long enough to cause irreparable monetary harm. Montana has a substantial interest in making sure caretakers don't go out of business because of the losses involved in enforcing a lien for nonpayment. The substantial cost and commitment involved in taking care of livestock makes an

agister's lien different than the typical liens for service (e.g. lien on a car) and that is why SB 86 is needed and constitutional.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Olson". The signature is written in dark ink and is positioned below the word "Sincerely,".